



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
<http://www.epa.gov/region08>

April 14, 2004

Ref: 8ENF-T

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
No. 7003 1010 0002 6364 3235

Jacqueline Ostrowski
Registered Agent for Hylander Automotive Services, Inc.
7921 S. Platte Canyon Rd.
Littleton, CO 80128

Re: Compliance Order and Administrative
Complaint under the Clean Air Act, 42
U.S.C. §§ 7413(a) and 7413(d)

Dear Ms. Ostrowski:

Enclosed are a Compliance Order ("Order") and an Administrative Complaint and Notice of Opportunity for Hearing ("Complaint"), each of which the U.S. Environmental Protection Agency ("EPA") is issuing to Hylander Automotive Services, Inc. ("Hylander").

The Order alleges that Hylander has violated the provisions of the Clean Air Act, 42 U.S.C. § 7401 *et seq.* (the "CAA"), and EPA's regulations that pertain to servicing motor vehicle air conditioners. The order requires that Hylander comply with all requirements of Section 612 of the CAA, 42 U.S.C. § 7671k, and 40 C.F.R. part 82, subpart G. EPA is authorized to issue this order under section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B).

In accordance with section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), the Order will not take effect until Hylander has had an opportunity to confer with EPA concerning the findings set forth in the Order. As stated in the Order, the request for such a conference must be made no later than thirty (30) calendar days from the date of Hylander's receipt of the Order. A request for a conference must follow the procedures set forth in the Order.

Like the Order, the Complaint alleges that Hylander has violated the CAA and EPA's regulations. The Complaint proposes that EPA assess an administrative civil penalty of \$18,000 for these violations. The EPA is authorized to assess administrative civil penalties under section 113(d) of the CAA, 42 U.S.C. § 7413(d).



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Hylander has the right to a hearing to contest the allegations in the Complaint and/or the proposed penalty. We have enclosed a copy of 40 C.F.R. part 22, which identifies the procedures EPA follows in penalty assessments of this type. Please note the requirements for an answer to the Complaint in 40 C.F.R. part 22.15(b).

If Hylander wishes to contest any allegation in the Complaint and/or the penalty proposed in the Complaint, Hylander must file an answer within thirty days of receipt of the enclosed Complaint with the EPA Region 8's Regional Hearing Clerk at the following address:

Regional Hearing Clerk (8RC)
U.S. EPA Region 8
999 18th St., Suite 300
Denver, CO 80202-2466

If Hylander does not file an answer by the applicable deadline, it may be held in default. A default judgment may impose the full penalty proposed in the Complaint.

EPA encourages settlement of penalty proceedings at any time prior to a formal hearing, if the settlement is consistent with the provisions and objectives of the CAA and applicable regulations. If a mutually satisfactory settlement can be reached, it will be formalized in a Consent Agreement. Upon final approval of the Consent Agreement by the EPA's Presiding Officer, Hylander would be bound by the terms of the Consent Agreement and would waive its right to a hearing on, and any judicial appeal of, the agreed-upon civil administrative penalty.

Hylander has the right to be represented by an attorney at any stage of the proceedings, including any informal settlement discussion with EPA, but this is not required.

Please note that arranging for a settlement conference does not relieve Hylander of the need to file a timely answer to the enclosed Complaint.

Please be advised that the issuance of this Order and this Complaint does not preclude the initiation of civil or criminal actions in U.S. District Court for the violations cited in the Order, for any other violations that Hylander may have committed prior to or may commit after the issuance of the enclosed Order, or for any failure to comply with the terms of the Order itself.

We also have enclosed an information sheet entitled "U.S. EPA Small Business Resources," which notifies small businesses of their right under the Small Business Regulatory Enforcement and Fairness Act (SBREFA) to comment on regulatory enforcement activities and provides information on compliance assistance. EPA's dissemination of this information sheet does not necessarily mean that we have determined that your business is a small entity as defined by SBREFA.

If you wish to discuss settlement or have any questions, the most knowledgeable persons on my staff for technical and legal issues, respectively, are Cindy Beeler, Environmental Engineer, who can be reached at (303) 312-6204, and Peggy Livingston, Enforcement Attorney, who can be reached at (303) 312-6858.

Sincerely,

SIGNED

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures

cc: Tina Artemis, Regional Hearing Clerk (with enclosures)
Dean Neely, CFC Program, CDPHE (with enclosures)

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VIII**

IN THE MATTER OF:)	ADMINISTRATIVE COMPLAINT AND
)	NOTICE OF OPPORTUNITY FOR
Hylander Automotive Services, Inc.)	HEARING
7921 S. Platte Canyon Road)	
Littleton, CO 80128)	Proceeding to Assess a Civil
)	Administrative Penalty Under
)	Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
<hr style="width:40%; margin-left:0"/>)	Docket No. CAA-08-2004-0005

The United States Environmental Protection Agency (“EPA”) is issuing this Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) in response to violations of the “Stratospheric Ozone Protection” requirements of Subchapter VI of the Clean Air Act (“CAA”), 42 U.S.C. § 7671 *et seq.*, and the “Protection of Stratospheric Ozone” regulations codified in 40 C.F.R. part 82.

STATUTORY AUTHORITY

1. Sections 113(a)(3)(A) and 113(d) of the CAA, 42 U.S.C. §§ 7413(a)(3)(A) and 7413(d), authorize the Administrator of the EPA to issue this Complaint. This authority has been duly delegated to the Assistant Regional Administrator, Office of Enforcement, Compliance, and Environmental Justice, U.S. Environmental Protection Agency (“EPA”), Region 8.
2. Consistent with section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), a copy of this Complaint is being sent to the Colorado Department of Public Health and Environment (CDPHE).
3. The EPA and the United States Department of Justice have determined that this matter is

appropriate for an administrative penalty action.

FINDINGS

Respondent

4. The Respondent is Hylander Automotive Services, Inc.
5. At all times relevant to this action, the Respondent has been a corporation organized under the laws of the State of Colorado.
6. At all times relevant to this action, the Respondent's business has consisted primarily of repairing and/or servicing motor vehicles at one or more facilities, including a facility located at 7921 S. Platte Canyon Road, Littleton, Colorado, 80128. The Respondent has received payment for the repairs and services it has performed.
7. At all times relevant to this action, the Respondent has been a "person" as that term is defined in section 302(e) of the CAA, 42 U.S.C. § 7602(e), and 40 C.F.R. § 82.172.

Statutory/Regulatory Background

8. This case involves Section 612 of the CAA, 42 U.S.C. § 7671k. Section 612 is intended to help protect stratospheric ozone. Section 612 requires the EPA to evaluate and regulate substitutes for ozone-depleting substances in order to reduce overall risks to human health and the environment.
9. As required by Section 612(c) of the CAA, 42 U.S.C. § 7617k(c), the EPA has promulgated a rule codified in 40 C.F.R. part 82, subpart G, establishing the "Significant New Alternatives Policy" program, or "SNAP" program.
10. The SNAP Program is intended to identify substitutes for ozone depleting substances, where the substances are believed to present lower overall risks to human health and the

environment, and to prohibit using these substitutes in a way that would increase overall risks. 40 C.F.R. § 82.170(a).

11. The SNAP regulations, in 40 C.F.R. §82.174(c), prohibit using a substitute without adhering to any use restrictions set by an EPA acceptability decision, after the effective date of any rulemaking imposing such restrictions.
12. On June 13, 1995, EPA promulgated regulations identifying certain substitute refrigerants and specifying conditions for using them. These regulations became effective on July 13, 1995 and were codified in 40 C.F.R. part 82, subpart G, appendix B. Appendix B allows “HFC-134a” to substitute for “CFC-12” (also known as freon) in automobile air conditioners, whether retrofitted or as new equipment, subject to the conditions that
 - HFC-134a must be used with unique fittings,
 - HFC-134a must be used with detailed labels, and
 - all CFC-12 must be removed prior to retrofitting.

Citizen Complaint

13. In February of 2003, a private citizen contacted CDPHE, stating that although the Respondent had converted air conditioning systems on two of his cars to the R-134a (same as HFC-134a) substitute in July 2002 and had charged him for two retrofit kits, he had since learned that the Respondent had neither changed the fittings to those unique to R-134a nor labeled his system as using R-134a.
14. In February of 2003, Dean Neely, a CDPHE inspector, analyzed the refrigerants in the above-mentioned citizen’s two automobiles and determined that each contained R-134a, but that neither had the proper fittings or labels required for R-134a.

Follow-Up Investigation

15. In February of 2003, Mr. Neely asked the Respondent for invoices for all motor vehicle air conditioning retrofit work that the Respondent had performed during July, August, and September of 2002. In response, Mr. Neely received six invoices. Upon contacting the customers named on the invoices, he was told that two had since sold their vehicles. Of the four indicating they still owned the same vehicles, all had been charged by the Respondent for a retrofit conversion to R-134a, but none had the required unique fittings, three had no labels, and one had an incomplete label (mentioning the name of the Respondent's business but giving no indication of any conversion to R-134a).
16. Of the six vehicles mentioned above (two belonging to the individual who first contacted CDPHE and the four mentioned in the additional invoices), none of the air conditioners had been serviced by any other facility since the work performed by the Respondent.
17. A summary of the pertinent invoices, dates of service, and vehicles follows:

Date of Service	Invoice No.	Vehicle (Year, Make, Model)	Violations
7/02/02	8543	1992 Buick LeSabre	No unique fittings or labels
7/04/02	8554	1991 Honda Accord	No unique fittings; lack of detailed labeling; no indication on label of any conversion to R-134a
7/10/02	8584	1988 Toyota Camry LE	No unique fittings or labels
7/29/02	8678	1992 Jeep Cherokee Laredo	No unique fittings or labels
7/31/02	8699	1993 Infinity G20	No unique fittings or labels
8/12/02	8758	1991 Mercedes 300SE	No unique fittings or labels

VIOLATIONS

Count I: Failure to Use Unique Fittings

18. Paragraphs 1-17 of this Complaint are realleged and incorporated herein by reference.
- Each of the six instances cited above in which the Respondent retrofitted a motor vehicle air conditioning system with HFC-134a without using the unique fittings required by 40 C.F.R. part 82, subpart G, Appendix B, is a violation of 40 C.F.R. § 82.174(c).

Count II: Failure to Label

19. Paragraphs 1-17 of this Complaint are realleged and incorporated herein by reference.
- Each of the five instances cited above in which the Respondent retrofitted a motor vehicle air conditioning system with HFC-134a without using any label as required by 40 C.F.R. part 82, subpart G, Appendix B, is a violation of 40 C.F.R. § 82.174(c).

Count III: Failure to Use Complete Label

20. Paragraphs 1-17 of this Complaint are realleged and incorporated herein by reference.
- The instance cited above, in which the Respondent retrofitted a motor vehicle air conditioning system with HFC-134a but failed to use a detailed label as required by 40 C.F.R. part 82, subpart G, Appendix B is a violation of 40 C.F.R. § 82.174(c).

PROPOSED ADMINISTRATIVE PENALTY

21. Based upon the relevant facts as known to the EPA at this time, and taking into account the penalty assessment criteria listed in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), the EPA proposes that the Respondent be assessed a civil penalty of \$18,000 for the violations alleged in this Complaint.
22. The proposed civil penalty set forth in this Complaint has been determined in accordance with Section 113 of the CAA, subsections (d)(1), (d)(2) and (e), 42 U.S.C. § 7413(d)(1),

(2) and (e). For violations occurring on or after January 31, 1997, section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. part 19 authorize the assessment of a civil administrative penalty of up to twenty-seven thousand five-hundred dollars (\$27,500) per day of violation of, *inter alia*, the “Stratospheric Ozone Protection” provisions of the CAA and the rules promulgated thereunder.

23. For purposes of determining the amount of any civil penalty to be assessed, Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), requires that EPA

. . . as appropriate, shall take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator’s full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

24. To develop the penalty proposed in this Complaint, the EPA has taken into account the particular facts and circumstances of this case with specific reference to EPA’s “Clean Air Act Stationary Source Civil Penalty Policy,” dated October 25, 1991 (“Penalty Policy”), a copy of which is enclosed with the copy of this Complaint being sent to the Respondent.¹ This policy provides a rational, consistent and equitable calculation

¹The enclosed copy omits all Appendices except Appendix V, the Air Civil Penalty Policy Worksheet, because Appendix V is the only appendix relevant to violations of 40 C.F.R. part 82, subpart G.

methodology for applying the statutory factors enumerated above to particular cases. The proposed penalty calculations are set forth below.

A. Economic Benefit Component

The economic benefit from servicing MVACs without using unique fittings or required labels – EPA is not seeking this, because it is estimated as less than \$5,000. --

B. Gravity Component

1. Actual or possible harm – For this factor, EPA considers the amount by which any emissions exceed the applicable standard (not relevant here), the toxicity of any emissions (not relevant here), the sensitivity of the environment (relevant only for SIP and NSR violations), and the length of time of the violation. The violations were at least 0-1 month in duration. \$5,000
2. Importance to regulatory scheme – each violation is of a work practice standard \$10,000
3. Size of violator – assuming net worth between \$100,001 and \$1,000,000 \$5,000

Total Gravity Component, before adjustments \$20,000

Adjustments to Gravity Factors

1. Degree of wilfulness or negligence – The Respondent had a high degree of control over its practices, the violations were foreseeable, and the requirements are widely known in the industry. It is not known to EPA whether this particular Respondent had knowledge of the applicable requirements. At this time, EPA is not increasing the penalty for this factor. --
2. Degree of cooperation – The Respondent did not report its violations to EPA. It is not known to EPA whether the Respondent has since corrected its practices. However, the Respondent cooperated with the CDPHE investigation. minus 10%

C. History of Noncompliance – EPA does not at this time have evidence of similar past violations by the Respondent.

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TOTAL PENALTY AMOUNT:

\$18,000

TERMS OF PAYMENT

25. In accordance with 40 C.F.R. § 22.18, the Respondent may resolve this proceeding at any time by paying the proposed penalty in full. If such payment is made within thirty (30) calendar days after receipt of this Complaint, no answer need be filed. If the Respondent needs additional time to pay the proposed penalty, the Respondent may, within thirty (30) days of receipt of the Complaint, file a written statement with the Regional Hearing Clerk stating that the Respondent agrees to pay the penalty, and then remit the penalty amount within sixty (60) days after receipt of the Complaint. Payment of the penalty shall: (1) be made by certified or cashier's check payable to "Treasurer, United States of America;" (2) identify the case title and docket number of this action (either on the check or in a transmittal letter accompanying the check); and (3) be remitted to:

U.S. Environmental Protection Agency, Region 8
Regional Hearing Clerk
P.O. Box 360859M
Pittsburgh, Pennsylvania 15251

A copy of the check shall be sent to:

Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

26. Payment of the penalty in accordance with the procedures set forth in this Complaint shall constitute consent by the Respondent to the assessment of the proposed penalty and a waiver of the Respondent's right to a hearing in this matter.
27. Neither the assessment nor the payment of an administrative penalty pursuant to

section 113(d) of the CAA, 42 U.S.C. § 7413(d), shall affect the Respondent's continuing obligation to comply with the CAA or any other federal, state, or local laws or regulations and any compliance order issued under the CAA.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

28. As provided in section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), and 40 C.F.R. § 22.15(c), the Respondent has the right to request a hearing in this matter. If the Respondent decides to request a hearing to contest any material fact upon which the Complaint is based, contend that the penalty proposed in the Complaint is inappropriate, and/or contend that the Respondent is entitled to judgment as a matter of law, the Respondent must file a written answer in accordance with 40 C.F.R. § 22.15 within thirty (30) days after service of the Complaint.
29. In accordance with 40 C.F.R. § 22.15(b), the Respondent's answer must: (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which the Respondent has any knowledge (for those factual allegations for which the Respondent has no knowledge and so states, the allegation is deemed denied); (2) state the circumstances or arguments which are alleged to constitute the grounds of any defense; (3) state the facts which the Respondent disputes; (4) state the basis for opposing any proposed relief; and (5) state whether a hearing is requested. Pursuant to 40 C.F.R. § 22.15(d), failure of the Respondent to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation. The Respondent's answer must be filed with:

Regional Hearing Clerk (8RC)

U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

A copy of the Respondent's answer and each additional document the Respondent files in this action must be served on:

Margaret J. (Peggy) Livingston
Enforcement Attorney (8ENF-L)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

30. In accordance with 40 C.F.R. § 22.17(a), if the Respondent elects to file an answer to the Complaint but fails to do so within thirty (30) days after service of the Complaint, the Respondent may be found to be in default and ordered to pay the penalty proposed in the Complaint. Additionally, a default by the Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of the Respondent's right to contest such factual allegations.

SETTLEMENT CONFERENCE

31. Regardless of whether the Respondent requests a hearing, the Respondent may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. The Respondent may wish to be represented by counsel at the informal conference. If a settlement is reached, it will be memorialized in a written Consent Agreement, followed by the issuance of a Final Order by the Regional Judicial Officer, EPA-Region 8. To explore the possibility of settlement in this matter, please contact:

Margaret J. (Peggy) Livingston (8ENF-L)
Enforcement Attorney
U.S. EPA, Region VIII

999 18th Street, Suite 300
Denver, Colorado 80202-2466
(303) 312-6858

Please note that a request for an informal settlement conference does not extend the thirty-day period for submission of a written answer.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant.

Date: 4/7/04

SIGNED

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice
U.S. EPA, Region VIII
999 18th Street, Suite 300
Denver, Colorado 80202-2466

Enclosures:

40 C.F.R. Part 22
CAA Penalty Policy

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by certified mail, return receipt requested, a copy of the foregoing ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING, a copy of the Consolidated Rules of Practices Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. part 22, and a copy of EPA's October 25, 1991 "Clean Air Act Stationary Source Civil Penalty Policy" (excluding all Appendices except for Appendix V, which is included) to:

Hylander Automotives Services, Inc.
7921 S. Platte Canyon Rd.
Littleton, CO 80128

Certified Return Receipt No: 7003 1010 0002 6365 3235

The original and one copy of the foregoing ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING were hand-delivered to:

Tina Artemis
Regional Hearing Clerk
U.S. Environmental Protection Agency
999 18th Street, Suite 300 (8RC)
Denver, CO 80202-2466

Date: April 14, 2004 SIGNED
Dayle De Arvil

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON APRIL 14, 2004.

